IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10052 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE J.R.VORA

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

DHIRAJGAR RANCHHODGAR GUNSAI

Versus

STATE OF GUJARAT

Appearance:

MS SUBHADRA G PATEL for Petitioner

Mr.Udai Bhatt AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE J.R.VORA

Date of decision: 07/12/2000

ORAL JUDGEMENT

#. The petitioner herein has challenged his order of detention passed by the District Magistrate, Kutch-Bhuj by way of this petition under Article 226 of the Constitution of India in exercise of the powers conferred

upon him under section 3(1) of the Gujarat Prevention of Anti-social Activities Act 1985 (PASA Act for short). The petitioner came to be detained in pursuance of the above said order on 2.8.2000.

#. The grounds of detention placed on record reveal that the detaining authority took into consideration the investigation in all the 7 crimes registered against the petitioner before Bhuj Taluka and City Police Station and one crime before Anjar Police Station. The crimes against the petitioner are registered under sections 379,392, 451,406 and 420 I.P.C. The detaining authority also took into consideration the statements of 5 witnesses who stated before the police authorities regarding the illegal activities of the petitioner. From the above material, the detaining authority came to the conclusion that the petitioner was a dangerous person within the meaning of section 2(c) of the PASA Act and hence the order of detention came to be passed against the petitioner.

#. Learned advocate Ms. Subhadharaben Patel for the petitioner and learned AGP Mr. Uday Bhatt for the respondents are heard.

#. It was vehemently urged on behalf of the petitioner that the privilege claimed by the detaining authority under section 9(2) of the Act regarding the secrecy of identity of the witnesses is not genuine. It was urged that this has prejudiced the right of the detenu to make representation before the appropriate authority and and disclosing of the names of the witnesses. It was urged that there is no material on record before the detaining authority to come to the conclusion that what is stated in the statement by the witnesses was true and the apprehension of the witnesses about the fear of the petitioner was true and correct.

#. Considering the rival contention and scrutinising the report it clearly appears that the statements of the witnesses are recorded on 26.6.2000 by PSI, LCB, Bhuj. Those statements are verified by the Sub-Divisional Police Officer. The witnesses alleged to have stated before the Sub-Divisional Police Officer that whatever they have stated before the PSI, was correct. From this the detaining authority reached to subjective satisfaction that the witnesses have stated before the PSI and as verified by the Sub-Divisional Police Officer that the due to fear of the petitioner, they have not made complaint against the petitioner and on this ground the privilege under section 9(2) of the PASA Act has been

claimed. In Jakirbhai Rahimbhai Nagori vs. District Magistrate as reported in 1996(1) GLH 300 this Court ruled that when there was no material before the detaining authority to come to a subjective satisfaction that what was stated by the witnesses before the police officer was correct, the claiming of privilege by the detaining authority under section 9(2) of the PASA Act was not genuine. In the present case as aforesaid the statements have been recorded by the PSI LCB , Bhuj but the witnesses have, in the name of verification again stated before the Sub-Divisional Police Officer that whatever they have stated before the PSI LCB was correct and from this material only the detaining authority reached to the subjective satisfaction that due to fear of the petitioner, the witnesses could not file any complaint. It is clear there from that the apprehension or fear caused by the witnesses in their statements was before the PSI LCB who recorded the statement. The detaining authority has hot recorded the statement in this case. Not only that the Sub-Divisional Police Officer also has not satisfied himself that the fear or apprehension caused by the witnesses in the statements recorded by PSI, LCB was correct according to him or it was felt by him that what was stated by the witnesses in the statement was found correct by him. The Sub Divisional Police Officer has only recorded the statements of the witnesses to that extent only that whatever the witnesses have stated before the PSI LCB was correct. Therefore, the Sub-Divisional Police Officer also did not satisfy himself that the fear or apprehension caused by the witnesses in the statements was correct and genuine; while the detaining authority neither recorded the statements of the witnesses nor verified the statement himself to arrive at a subjective satisfaction that what was stated in the statements was true. On the contrary the detaining authority relied upon the endorsement of Sub-Divisional Police Officer who as aforesaid from the record available did not satisfy himself that the fear or apprehension caused by the witnesses was genuine. Therefore, in fact there is no record at all from which the detaining authority could reach to the subjective satisfaction that the fear or apprehension caused by the witnesses against the petitioner was genuine one because this verification about the genuineness has neither been done by the Sub-Divisional Police Officer or by the detaining authority and the detaining authority merely relied on the endorsement made by the Sub-Divisional Police Officer regarding offering of statements before the PSI LCB and therefore, the contention of privilege claimed by the de taining authority under section 9(2) of the Act was not

genuine, will have to be accepted and the order of detention on this ground alone is required to be set aside.

#. In view of the above discussion the detention order passed against the petitioner by the District Magistrate, Kutch-Bhuj on 2.8.2000 is hereby ordered to quashed and set aside. The petitioner Dhirajger Ranchhodger Gunsai is ordered to be r eleased forth if he is not required to be detained for any other purpose. Rule is made absolute. Direct service permitted.

(J.R.Vora.J)

govindan